

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

CHARLES WESTLEY NEWMAN,  Petitioner,  vs.  BRENT FLUKE, Warden of South Dakota State Penitentiary; GORDON SWANSON, South Dakota Board of Pardons and Paroles - Non-Compliance Panel; MYRON RAU, South Dakota Board of Pardons and Paroles - Non- Compliance Panel; THE ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA,  Respondents.	4:22-CV-04158-KES  ORDER DENYING MOTION FOR A CERTIFICATE OF APPEALABILITY
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Petitioner, Charles Westley Newman, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. Docket 1. Magistrate Judge Veronica L. Duffy issued an order to show cause and for service, requiring both parties to show cause as to why Newman’s petition should not be dismissed without prejudice as not properly exhausted and as procedurally defaulted. Docket 4. Newman has appealed that order. Docket 10.

This court construes Newman’s appeal as seeking a certificate of appealability. *See* Docket 11. But a certificate of appealability would only be necessary to appeal a “final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court[.]” 28 U.S.C. § 2253(c)(1)(A). The order that Newman appeals is not a final order. *See*

Docket 4. Thus, Newman's motion for a certificate of appealability (Docket 11) is denied.

IT IS ORDERED:

1. That Newman's motion for a certificate of appealability (Docket 11) is denied.

Dated December 9, 2022.

BY THE COURT:

/s/ Karen E. Schreier  
KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE